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No. 03-382

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA BY AND THROUGH JOSEPH E. GARST,

Petitioner,

v.

LOCKHEED-MARTIN CORPORATION, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR REHEARING

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PETITION FOR REHEARING

Petitioner respectfully requests rehearing of his Petition for Writ of Certiorari. He bases his request upon information released on November 6, 2003. Specifically, the Department of Veterans Affairs, headed again by Secretary Anthony Principi, has selected Lockheed Martin Corporation to lead an eight-year Global Information Technology Support Services Program projected to generate $3.1 billion in revenues.

Shortly after this Court entered an order denying the Petition for the Writ of Certiorari on October 20, 2003, the Department of Veterans Affairs and Lockheed Martin Corporation (hereinafter "Lockheed Martin") announced that the Department ha selected Lockheed Martin for the Department's Global Information Technology Support Services program. This program will be managed by the Department of Veteran Affairs acquisition center in Austin, Texas. The announced purpose of this program is to provide information technology and telecommunication products and services to all federal agencies through the Department of Veterans Affairs Global Information Technology Support Services Program.

The contractual relationship announced on November 6 is remarkably and dangerously similar to the National Office Automation, Veterans Affairs contract that in 1992 formed the gravamen of Petitioner's underlying complaint. Both contracts are indefinite delivery, indefinite quantity contracts projected to extend over a period of years. Both contracts call for substantial expenditures from the public fisc for agency-wide information technology products and services. Both contracts contain requirements for, *inter alia*, systems integration, information security and software development.

The new program has a revenue potential of $3 billion, while the National Office Automation, Veterans Affairs contract was budgeted merely at $300 million. Both were awarded while Anthony Principi was either the Secretary or the Deputy Secretary of the Department. Given the alarming similarities between the two contracts, it is reasonable to assume that the Global Information Technology Support Services Program, like its NOAVA predecessor, will be made to be at least *de facto* administratively mandatory to achieve standard policies such as uniformity.

The announcement of this new acquisition program between the Department of Veterans Affairs and Lockheed Martin Corporation represents substantial grounds for rehearing not previously presented to this Court. Further, the announcement underscores the importance of two of the reasons advanced by Petitioner for granting a writ of certiorari. These were the clear and present danger to the fisc and the importance of protecting the nation's reputation for commitment to the rule of law and preserving the integrity of government operations.

A. The Department of Veterans Affairs Global Information Technology Support Systems Program involving Lockheed Martin substantially strengthens and supports Petitioner's rationale to the Court that a writ should be granted to avert a clear and present danger to the public fisc.

As Petitioner warned, Lockheed Martin and Anthony Principi have interpreted the denial of a writ of certiorari as a ratification and validation of their perfected scheme for raiding the public fisc. They obviously feel free to implement a new contractual vehicle, which will allow them to harvest

a substantial portion of the projected $3 billion in program revenues over the next eight years in a scenario perilously similar to the one addressed in Petitioner's complaint.

Within eight years, Anthony Principi is highly likely to leave the cabinet position of Secretary of the Department of Veterans Affairs. It is also entirely possible that he will return to Lockheed Martin Corporation or one of its affiliates or subsidiaries. What is to stop him from taking control of this new Global Information Technology Support Services Program as a private sector official? If he does, he would presumably be too careful to leave the type of documentation obtained during the underlying litigation. It is unlikely that this time he or Lockheed Martin will leave time and expense receipts (Ex.11, Third Amended Complaint) for "luncheon with VA official" or "lobbying public officials" during the statutorily prohibited periods. It is highly unlikely that this time he will document concealment efforts such as his direction to a Lockheed public relations official quoted below (presented in Ex. 13, Third Amended Complaint):

> To: Ron Jury
>
> From: Anthony Principi
>
> Date: May 17, 1995
>
> Subj: Press Release
>
> RON, I HOPE YOU WON'T MIND MY MAKING A FEW CHANGES TO THE PRESS RELEASE IN VIEW OF THE SENSITIVITY AT THE VA, AND GOVERNMENT IN GENERAL REGARDING FORMER PUBLIC OFFICIALS AND ONGOING CONTRACTS. I THOUGHT IT BEST NOT TO HIGHLIGHT OUR NOAVA CONTRACT WITH MY FORMER DEPART-

> MENT ESPECIALLY AT THIS TIME. WE ARE HOPING TO OBTAIN AN INCREASE IN CONTRACT FUNDING AND THE PRESS WOULD FEED ON THE TIMING OF MY APPOINTMENT. AFTER DELETING THE NOAVA PORTIONS OF THE RELEASE A FEW OTHER CHANGES FELL INTO PLACE.
>
> I HOPE MY TITLE IS CEO AS THAT'S WHAT I WAS TOLD AND THE UNDERSTANDING WITHIN LISC AND AT THE VA.

This time around, if there is a violation or even a series of violations involving present and payment of false claims, concealments, misrepresentations or even bribes or death threats, what is the likelihood, given the disposition of this case, that any Government employee, contract agent, Inspector General, Assistant U.S. Attorney or other Department of Justice attorney would take action? Who among them would believe that the relevant provisions of Titles 18 or 31 of the United States Code will be enforced by the courts when Lockheed Martin Corporation and a cabinet level official are involved?

Even the fail-safe provision established by Congress in the *qui tam* provisions of the False Claims Act will have little deterrent value. Petitioner's attorneys invested over five years and hundreds of thousands of dollars to bring the specific and particular information of presentment and payment of false claims, corruption and defalcation used to defraud the nation's fisc within the jurisdiction and attention of the judicial system. For example, while the former contract addressed in Petitioner's complaint required each claim that was presented by Lockheed Martin to be a guarantee that each item billed to the Government met all material

requirements of the contract, Lockheed Martin's claims were paid by the Department of Veterans Affairs for computer systems that did not meet many of the material contract requirements and many systems never became operational. Further, Lockheed Martin double billed for items its contract had included in the purchase price. Unless the Court grants the writ of certiorari, it is highly unlikely that any other set of plaintiff's attorneys will be willing to make a similar investment under like circumstances.

In the event that this Court declines to rehear and reconsider granting the writ of certiorari, those who have made and received payment for false claims and who have used deceit, concealment, corruption and death threat to obtain public funds they would not otherwise have received will triumph. Their victory will extend not only to the millions that they have stolen, but also to the billions that they may potentially steal in the future. The Department of Veterans Affairs Global Information Technology Support Services contract is the very real, clear, present and dangerous vehicle to accomplish that end.

B. The new contract involving Lockheed Martin substantially strengthens and supports Petitioner's rationale to the Court that a writ should be granted to protect the nation's reputation for commitment to the rule of law and to preserve the integrity of the nation's system of government.

The awarding of the Veterans Affairs Global Information Technology Support Services Program provides new substantial grounds supporting the importance of protecting the nation's commitment to the rule of law and the integrity of our system of government.

Our leaders and recognized economic experts have recognized that freedom from corruption in government and the rule of law are two essential elements for a viable nation and economy.

As reported in the October 31, 2003 edition of the *Chicago Sun Times*, noted British economist Niall Ferguson, delivering the first Richard J. Franke Lecture on October 30, 2003 at the Newberry Library in Chicago, discussed the crucial benefits of two successive centuries of British and American influence on the world. "These include the assurance of security and free markets for both the homeland and the territories," "And most crucially, it fosters rule of law and the creation of non-corrupt administration — conditions that, more than anything, are sources of economic development."

As this Court evaluates the importance of granting a writ of certiorari in light of the new successor Information Technology contractual relationship between the Department of Veterans Affairs (again under the cabinet level leadership of Anthony Principi) and Lockheed Martin Corporation, Petitioner respectfully directs the Court's attention to the remarks of President John F. Kennedy in the Radio and Television Report to the Nation on the Situation at the University of Mississippi, September 30, 1962. President Kennedy stated, in pertinent part:

> The orders of the court in the case of Meredith v. Fair are beginning to be carried out. Mr. James Meredith is now in residence on the campus of the University of Mississippi.

> This has been accomplished thus far without the use of National Guard or other troops. And it is to be hoped that the law enforcement officers of the State of Mississippi and the Federal marshals will continue to be sufficient in the future.
>
> All students, members of the faculty, and the public officials in both Mississippi and the Nation will be able to return to their normal activities with full confidence in the integrity of American law.
>
> This is as it should be, for our Nation is founded on the principle that observance of the law is the eternal safeguard of liberty and defiance of the law is the surest road to tyranny. The law which we speak of includes the final ruling of the courts, as well as the enactments of our legislative bodies. Even among law-abiding men few laws are universally loved, but they are uniformly respected and not resisted.
>
> Americans are free, in short, to disagree with the law but not to disobey it. For in a government of laws and not of men, no man, however prominent or powerful, and no mob, however unruly or boisterous, is entitled to defy a court of law. . . . .

The same should hold true for the statutory safeguards established by Congress to protect the public fisc from the presentment and payment of false claims and frauds perpetrated by bribes, death threat and violations of established ethical standards and revolving door prohibitions addressed in the relevant provisions of Titles 18 and 31 of the United States Code. It is clear from the recent announcement of the

successor Information Technology contractual relationship between the Department of the Veteran Affairs, under Anthony Principi's cabinet level leadership, and Lockheed Martin that these interests and $3 billion of public funds are now and will continue to be at risk over the next eight years.

CONCLUSION

Wherefore, Petitioner respectfully prays for rehearing and a grant of his petition for a writ of certiorari.

Respectfully submitted,

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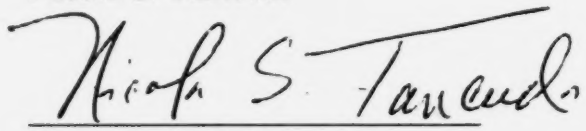
CERTIFICATION

The undersigned attorney for Petitioner hereby certifies that the accompanying Petition for Rehearing of the Denial of Petition for Writ of Certiorari is warranted by substantial grounds not previously presented. The undersigned attorney for Petitioner further certifies that the accompanying petition is limited to grounds set forth in Supreme Court Rule 44.2 and that it is presented in good faith and not for purposes of delay.

Respectfully submitted,
Nicola S. Tancredi



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